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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-564

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 OF THE TOWNS OF ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Petitioners,

—v.—

CHARLES JAMES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 OF THE TOWNS OF ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the Western District of New York (Burke, J.) summarily dismissing respondent's complaint has not been officially reported. It is reproduced in the Appendix to the Petition

herein at pp. 40-42. The opinion of the Court of Appeals for the Second Circuit reversing the summary dismissal of respondent's complaint and remanding the case for further proceedings is reported at 461 F.2d 566 and is reproduced in the Appendix to the Petition herein at pp. 21-39. The preliminary injunction granted by the District Court on remand from the Second Circuit has not been officially reported. It is reproduced as an Appendix to this Brief in Opposition at pp. 5a-7a.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

1) May petitioners summarily dismiss respondent, a high school English teacher, solely because, as a Quaker, he wore a black armband to class as an expression of his anguish over the loss of life in Vietnam, in the absence of any showing that respondent, by wearing the armband, threatened to disrupt classroom activities or in any way interfered with his teaching responsibilities?

2) Was respondent entitled to a hearing prior to his dismissal for engaging in colorably protected First Amendment activity?

3) Was respondent denied the equal protection of the laws in being dismissed while other teachers in the school in question engaged in substantially similar conduct supportive of the Vietnam war without incurring disciplinary sanctions?

4) Was the determination of the Second Circuit remanding this action to the District Court for further proceedings a final disposition herein rendering this case ripe for review by this Court?

Statement of the Case

On June 7, 1969, respondent, Charles James, was engaged as an 11th grade English teacher at Addison High School. Apart from the "black armband incident" which forms the basis of this action, no question concerning James' competence or teaching ability has been raised [A. 5a; 46a].*

James, who had moved to the Elmira area after teaching in the New York City Public Schools, is a practicing Quaker and, shortly after arriving in the Elmira community, joined the Elmira Meeting of the Society of Friends (Quakers).[1] During the Autumn of 1969, the Elmira Meeting expressed concern over the massive loss of life in Vietnam. When two dates in the Autumn of 1969 were designated as "moratorium" days by opponents of the Vietnam War, the Elmira Meeting convened to discuss how best to observe the moratorium days in the context of the traditional Quaker aversion to participation in war in any form. After discussion, the Meeting agreed to prepare and to wear black armbands

* Citations to the Appendix herein lodged with the Second Circuit are denoted as [A. —].

[1] James' deep religious convictions are of long standing. He had studied for the Methodist Pastorate at Mansfield State College and Colgate-Rochester Divinity School, had served as a Methodist Minister from 1955-1963 and had served on the World Peace Commission of the Methodist Church in 1956. James' strong pacifist beliefs led him to become a Quaker in the mid 1960's. James had volunteered for service in the Korean War in 1950 as a Chaplain's Assistant [A. 47a].

on moratorium days as a sign of mourning for all those killed in the Vietnam War and as an expression of deep conviction that the existence of war was incompatible with their religious faith. Accordingly, the members of the Meeting prepared black armbands at the Quaker Meeting House and distributed them to members of the Meeting.[2]

On November 14, 1969, prior to reporting to school, Charles James affixed one of the black armbands which had been prepared for the occasion to the sleeve of his jacket. In James' own words:

> "I was held by the awareness that after at least 25 centuries of civilization men found within their lives the will to deliberately, and when possible, carefully, kill each other. And often this occurred while looking upon one another so as to behold death and dying willingly.
>
> "I considered wearing my armband—considered its value and considered the possible glares and frowns from colleagues. I decided for wearing it as my mind once again staggered at man's willful killing of man. I could not responsibly leave that armband behind and go through *just another day.* If that armband could trigger someone to consider that some people do believe in the preciousness of life and dare to say so then our world would have a better chance of survival. Our Quaker meeting had made it for this purpose; the rest was up to me. Those years of letter writing, preaching, speaking, arguing and marching

[2] A joint statement describing the basis for the Elmira Meeting's preparation of black armbands as an expression of religious aversion to war has been subscribed to by each member of the Meeting, was submitted to the Court below [A. 52a-56a] and is reproduced in the Appendix to this Brief in Opposition at pp. 1a-4a.

would be rendered hollow if I didn't wear it." Brief of Appellant, p. 3.

Shortly after the opening of school on November 14, 1969, the Principal of Addison High School, Carl Pillard, entered James' home room and noticed his black armband, but made no comment. Midway through the school's second period, Pillard summoned James and requested him to remove his armband. When James refused, Pillard directed him to discuss the matter with Edward J. Brown, the District Principal. Brown ordered James to remove his armband or risk suspension and firing because Brown believed that James' wearing the armband constituted a symbolic expression of his political views. In addition, Brown feared that "wearing the armband would *tend* to be disruptive and would *possibly* encourage pupils to engage in disruptive demonstrations." Affidavit of Edward J. Brown, par. 7 (emphasis added) [A. 21a-24a].

When James explained that as a matter of conscience and religious scruple he could not remove the armband, Brown suspended him and ordered him to leave school immediately. James complied with Brown's directives and went directly to the Quaker Meeting House in Elmira where he participated in a prayer vigil seeking an end to war in any form [A. 50a].

On November 15, 1969, James received a communication from Central Board No. 1 confirming Brown's right to suspend him, but reinstating him provided that he engage in no "political" activity while in school [A. 33a]. Since the incident which had precipitated James' suspension had been overwhelmingly motivated by religious conscience, James returned to school on November 17 hopeful that the

entire incident was closed. He taught without further incident until December 12, 1969 [A. 50a].

On December 12, 1969, in conjunction with a second national "moratorium" day, the Elmira Meeting once again prepared black armbands as a sign of mourning for all those killed in war and as an expression of their religious aversion to war in any form. James, viewing the armbands as the expression of a deeply sensed religious conscience, felt compelled, once again, to wear a black armband on December 12 [A. 7a; 50a-51a].

Upon learning that James had appeared at Addison High School wearing a black armband, Brown summarily suspended him from his teaching duties. James was, thereupon, fired by Central Board No. 1 on January 13, 1970, without a hearing, solely as the result of having worn a black armband to school [A. 51a].

At no time was it even alleged that James' armband had either caused or created a reasonable apprehension of interference with the normal operation of Addison High School. Indeed, Brown's expressed fear that James' armband would *tend* to be disruptive and would *possibly* encourage disruption is a classic example of the "undifferentiated fears" which this Court explictly held could not justify the suppression of First Amendment activity by school officials. *Tinker* v. *Des Moines*, 393 U.S. 503 (1969).

Moreover, at no time has any person accused James of proselytizing his views or in any way attempting to impose his religious or political views upon his students, other than by wearing an unadorned black armband on his sleeve.[3]

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[3] As Judge Kaufman stated below: "Clearly, there was no attempt by James to proselytize his students. It does not appear from the

Subsequent to his dismissal, James appealed to the New York State Commissioner of Education for reinstatement. Commissioner Nyquist sustained petitioners' action, relying upon *O'Connor* v. *Hendrick*, 184 N.Y. 421 (1906) [A. 25a-32a].

After thus exhausting his state administrative remedies, James commenced this action pursuant to Title 42 U.S.C. §1983 to challenge the constitutionality of his dismissal.[a]

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record that any student believed the armband to be anything more than a benign symbolic expression of the teacher's personal views." 461 F.2d at 574.

[a] The Commissioner of Education, *amicus curiae*, suggests that James should have utilized an unspecified alternative appeal procedure in seeking Federal judicial review of his dismissal. Apparently unfamiliar with Federal procedure, *amicus* overlooks the fact that an action pursuant to Title 42 U.S.C. §1983 and Title 28 U.S.C. 1343(3) was the most appropriate, and perhaps the sole, vehicle for James to utilize in seeking Federal judicial review of his dismissal. Moreover, *amicus* overlooks the fact that the Second Circuit has instructed civil rights litigants to exhaust administrative remedies—such as appeals to the Commissioner of Education—prior to seeking judicial review in a Federal court. *Eisen* v. *Eastman*, 421 F.2d 560 (2nd Cir. 1969). Having scrupulously observed the course laid out by *Eisen*, respondent can hardly be said to have failed to follow appropriate procedure in seeking Federal judicial review of his dismissal.

At best, the Commissioner's procedural objection appears to be that he should have been named as a party defendant in James' federal complaint—hardly grounds for the application of the *res judicata* doctrine or the summary dismissal of respondent's complaint. While the Commissioner might be a permissible party below, he is certainly not an indispensable one. After all, the Commissioner neither dismissed James nor ordered him dismissed. The Commissioner is not liable for the payment of James' salary. He simply declined an administrative appeal to reverse petitioners' decision. In any event, *amicus* had full notice of the action below and, indeed, appeared vigorously in both lower courts as *amicus curiae* in support of the petitioners.

Moreover, should the Commissioner wish to do so, he may move to intervene as a party at the District Court level and participate fully in any future trial.

(continued on following page)

The District Court summarily dismissed James' complaint on the ground that James' unsuccessful administrative appeal to the Commissioner of Education was a *res judicata* bar to any attempt to secure judicial review under Title 42 U.S.C. §1983. In addition, Judge Burke summarily dismissed respondent's contentions that his rights under the First and Fourteenth Amendments had been violated by his dismissal.

The Court of Appeals for the Second Circuit unanimously reversed the summary dismissal of respondent's complaint and remanded to the District Court for further proceedings not inconsistent with its opinion. On August 11, 1972, the District Court issued a preliminary injunction ordering petitioners to reinstate James as a teacher of English at Addison High School for the 1972-1973 school year pending the final disposition of this action. (The text of Judge Curtin's preliminary injunction is reproduced as an Appendix to this Brief in Opposition at pp. 5a-7a.) Petitioners have neither appealed from the grant of preliminary injunctive relief nor sought a plenary trial on the merits.

Shortly after the issuance of the preliminary injunction by Judge Curtin, petitioners reinstated James, but assigned

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Finally, the assertion of the Commissioner that the Second Circuit was unaware of the record before the Commissioner in James' administrative appeal is, simply, false. The printed Appendix lodged with the Second Circuit below contained both James' petition to the Commissioner, as well as the Commissioner's adverse decision. The Court below recited the undisputed fact that no transcript of proceedings before the Commissioner is kept and specifically noted that:

> "[petitioners] conceded at oral argument that the broad range of James' grievances were discussed informally before the Commissioner." 461 F.2d at 571, n. 11.

him a "teaching" program consisting of six study halls and a lunch period.[4]

James has performed his duties without incident since the opening of school.

ARGUMENT

I.

The decision below is clearly correct.

A. *Respondent's Dismissal Violated His First Amendment Right of Free Speech*

Judge Kaufman, in his decision below for a unanimous panel of the Second Circuit, merely applied settled law that public school teachers and students are entitled to basic First Amendment rights in the absence of a showing that a given expression of opinion would create a concrete danger of dislocation of the educational process. E.g., *Pickering* v. *Board of Education*, 391 U.S. 563 (1968); *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Epperson* v. *Arkansas*, 393 U.S. 97 (1968); Compare *Burnside* v. *Byars*, 363 F.2d 744 (5th Cir. 1966), with *Blackwell* v. *Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966); *Hanover* v. *Northrup*, 325 F. Supp. 170 (D. Conn. 1970); *Keefe* v. *Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Parducci* v. *Rutland*, 316 F. Supp. 352 (M.D. Ala. 1970).

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[4] After vigorous protests that petitioners' action in assigning James to six study halls violated both the letter and the spirit of Judge Curtin's preliminary injunction, petitioners have modified his "teaching" schedule to consist of four study halls and two elective courses involving a total of ten high school seniors.

In light of *Pickering*, petitioners concede that James was constitutionally entitled to identify himself openly with potentially controversial opinions. Given such a concession, petitioner's attempt to distinguish Pickering's open letter from James' black armband is singularly unpersuasive. James' black armband did nothing more than publicly announce his identification with a given religious (Quaker) attitude toward war in general—and toward the war in Vietnam in particular. Since James' armband contained no elements of coercion or intimidation, and in no way interfered with the orderly teaching of his 11th grade English class, the effect of his armband was no different than if he had written a letter to the school or local newspaper vigorously expressing his aversion to war. Cf. *Montgomery* v. *White*, 320 F. Supp. 303 (E.D. Tex. 1969). Thus, in the absence of a showing, or even an allegation, that James' armband interfered with his teaching activities or exercised any coercive or intimidating effect upon his students, petitioners may no more fire Charles James than they could have fired Pickering for writing an open letter on the Vietnam War.[5]

Petitioners have attempted to justify James' dismissal by arguing that "wearing the armband would *tend* to be disruptive and would possibly encourage pupils to engage in disruptive demonstrations." Affidavit of Edward J.

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[5] Petitioners' reliance upon *Goldwasser* v. *Brown*, 417 F.2d 1169 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 922 (1969), is similarly misplaced. In *Goldwasser* a civilian employed by the Army to teach English to foreign officers attending the Army War College persisted in utilizing classroom time to discuss the propriety of American military policy. Since his criticism, by using class time, substantially impaired his ability to carry out his teaching assignments, he was dismissed. However, no one has even alleged that James' expression in any way interfered with his teaching responsibilities.

Brown, par. 7 (emphasis added) [A. 22a]. However, such speculative—and unreasonable—fears cannot found the basis for the suppression of First Amendment activity in the context of a public school. E.g., *Tinker* v. *Des Moines, supra.*

The state does, of course, possess a substantial interest in assuring that teachers do not coerce or intimidate students. However, such an interest may be protected without depriving teachers of the ability to express themselves in a non-coercive and non-intimidating manner. Thus, were James alleged to have expressed his aversion to the killing in Vietnam in a coercive or intimidating manner, petitioners would have been perfectly justified in conducting a hearing and, if persuaded of the charges, imposing appropriate sanctions. However, no one has accused James of coercion or intimidation. No student has even suggested that he or she felt intimidated by James' armband. In the absence of such intimidation or coercion, the state lacks a legitimate interest in curbing James' expression.[6]

Thus, the issue is not whether a teacher's coercive, intimidating or disruptive expressions must be tolerated. Of course, such conduct may—and should—be met with firm disciplinary response. Rather, the issue is whether, in the guise of protecting children from intimidation or coercion, the state may forbid a teacher to express an opinion in a

[6] Commissioner Nyquist's position upholding James' dismissal appears to assume that any expression of opinion by a teacher to a student on political issues would have an inherently coercive impact. However, a function of the public schools is to educate citizens for active participation in a democracy. So long as it is non-coercive, a teacher's healthy exchange of ideas and opinions with students can only benefit the democratic process. See, 461 F.2d at 574.

non-coercive manner. Since, the Court below explicitly noted that "the record is barren of a scintilla of evidence indicating that there were any incidents or threats to school discipline, that any students or teachers had complained of or were offended by James' first or second protest, or that the armband constituted more than a silent expression of James' own feelings." 461 F.2d at 569, it is clear that James' actions were protected by the First Amendment.

B. *Respondent's Dismissal Violated His First Amendment Right to the Free Exercise of His Religion*

Although petitioners perceived the "black armband" incident as the expression of a "political" opinion, James was motivated primarily by traditional religious impulses in deciding to affix the armband to his sleeve.[7]

The armbands were prepared at the Quaker Meeting House by members of the Elmira Meeting of the Society of Friends. As a member of the Elmira Meeting, James joined his co-religionists in expressing the traditional Quaker aversion to war in any form by affixing the armband to his sleeve. See, Joint Statement of the Elmira Meeting [A. 52a-56a] reproduced in the Appendix to this Brief at pp. 1a-4a.

In denying James' appeal, Commissioner Nyquist relied upon what he considered to be settled New York law forbidding public school teachers from wearing religious habits in the classroom. *O'Connor* v. *Hendrick,* 184 N.Y. 421 (1906). Respondent believes that whatever the validity

[7] Since the Court below ruled that James' dismissal infringed upon his freedom of speech, it refrained from considering James' claims that the discharge violated his rights to free exercise of religion, equal protection of the laws and procedural due process of law. 461 F.2d at 571 n. 12; 574 n. 17.

of New York's ban upon the wearing of religious habits by nuns employed as public school teachers, the ban on religious garb in the classroom may not constitutionally be extended to prohibit the wearing of non-obtrusive religious symbols, such as respondent's Quaker armband.

The "religious freedom" cases decided by this Court have consistently held that before a state can infringe upon the free exercise of religion, it must demonstrate a compelling state interest which cannot be accommodated by less drastic means. E.g. *Wisconsin* v. *Yoder*, —— U.S. ——, 32 L. Ed.2d 15 (1972); *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *In re Jenison*, 265 Minn. 96, 120 N.W.2d 515 (1963), vacated and remanded, 375 U.S. 14 (1963), on remand 125 N.W.2d 588 (1963).

What compelling state interest justified the dismissal of Charles James in punishment for having exercised his religious conscience?

Certainly not petitioners' vague and undifferentiated fears of possible future disruption, since no disruption could have been reasonably foreseen.

Certainly not petitioners' commendable desire to shield high school students from indoctrination at the hands of their teachers, since it is conceded that apart from wearing his armband, James made no attempt to foist his religious or political views upon students. Nor can one contend that a compelling state interest exists in obliterating the religion of a teacher from a student's consciousness. As Mr. Justice Douglas noted in *Zorach* v. *Clauson*, 343 U.S. 306 (1952), we are a religious people and it can advance no compelling, or even rational, state interest to

require our public school teachers to masquerade as religiously neuter.

Intimidation or indoctrination cannot be tolerated; but in protecting against such evils it is not necessary to deprive teachers of the ability to express their religious consciences in a non-coercive, non-intimidating manner. The state interest which petitioners' dismissal of James purported to serve may be advanced by less drastic means without infringing upon his religious freedom.

C. *Respondent's Dismissal Violated His Fourteenth Amendment Right to the Equal Protection of the Laws*

It is common practice at Addison High School, as it is in schools throughout the country, for teachers to wear religious emblems and medallions [A. 8a-9a]. Respondent is, of course, not offended by such displays of piety. He is offended, however, at having been singled out for punishment because his religious emblem incurred the displeasure of his superiors.

Moreover, at least one teacher at Addison High School has openly displayed the slogan "Peace With Honor" on his classroom bulletin board without incurring any disciplinary sanctions whatever [A. 9a]. Once again, respondent is not offended by this innocuous expression of support for the Nation's policies in Vietnam. He is offended, however, because his equally innocuous expression of grief over the loss of life in Vietnam was greeted with summary dismissal.

The essence of equal protection is the refusal to tolerate the discriminatory application of the law. Yet, petitioners appear to have adopted a discriminatory dual standard at

Addison High School which tolerates expression only if it is not offensive to the petitioners.

D. *Respondent's Dismissal Violated His Fourteenth Amendment Right to Procedural Due Process of Law*

Respondent was dismissed on January 13, 1970, midway through his one year contract, without any hearing whatever. He was, therefore, never afforded an opportunity to explain to the school board which fired him why he felt compelled to wear mourning for the dead in Vietnam. Nor was he afforded an opportunity to establish that his wearing a black armband had neither disturbed the normal operation of Addison High School nor exerted any coercive or intimidating impact upon his students.

In effect, the procedure utilized by petitioners in firing James without a hearing deprived the school board of any opportunity to render a reasoned decision based upon a study of what actually occurred. Since the critical element in cases such as *Tinker, Pickering* and *James* is the existence or non-existence of concrete factual matter justifying a reasonable apprehension of disruption of the educational process, the school board's ostrich-like refusal to explore the facts surrounding James' dismissal utterly disabled the board from performing its constitutional responsibility.

In *Board of Regents* v. *Roth,* —— U.S. ——, 33 L. Ed. 548 (1972), this Court recognized that if the dismissal of a public school teacher impinged upon his "property" or his "liberty," he was entitled to a due process hearing prior to dismissal.

Since James was dismissed during the term of his teaching contract, the "property" test enunciated in *Roth* is clearly satisfied.

Moreover, since James was concededly dismissed for engaging in colorably protected First Amendment activity, his dismissal impinged upon his "liberty" as well, thus necessitating a due process hearing prior to dismissal. *Board of Regents* v. *Roth*, —— U.S. ——, 33 L. Ed.2d 548 (1972) at 558.

II.

This Court should decline to review a non-final judgment of the Second Circuit.

Petitioners have consistently asserted that the decision of the court below is merely a preliminary determination pending a plenary trial on the merits in the District Court. Accordingly, petitioners refused to reinstate James based upon the decision below and have announced their intention to proceed to trial at some undefined date in the future. Since petitioners view the decision below as a non-final judgment, their request for review by this Court at this stage of the proceedings is premature.

Although 28 U.S.C. §1254(1) vests this Court with power to review non-final judgments issued by Courts of Appeal, such power is exercised only under extraordinary circumstances. See generally, Stern and Gressman, *Supreme Court Practice*, Sec. 4.19. If and when petitioners choose to proceed to trial, or, if and when petitioners concede that no further issues of fact exist which would necessitate a plenary trial, they will be afforded ample opportunity to seek review in this Court. However, in their present posture, petitioners seek merely to review the interlocutory determination of the Second Circuit that the grant of sum-

mary judgment for the defendants in the District Court was erroneous.

Thus, in effect, petitioners seek to appeal to this Court from the denial of their motion for summary judgment. Decades of experience have instructed appeals courts at all levels that the toleration of such interlocutory sorties dramatically burdens appellate dockets, without providing any increase in judicial efficiency or economy. Thus, petitioners' attempt to secure review of a non-final judgment remanding the case for trial should be denied.

CONCLUSION

Petitioners' application for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

Joint Statement Describing Basis for Preparation of Black Armbands

The Elmira Meeting of the Religious Society of Friends

Charles and Neva James are members of the Elmira Meeting of the Religious Society of Friends. Having come to us from the Flushing Meeting, they have regularly attended and supported the Elmira Meeting and are held in high esteem and affection by every Friend in our Society.

Our meeting worked with the Elmira Committee for Peace, which was composed of local church representatives—Methodist, Baptist, Greek Orthodox, Roman Catholic, and Unitarian—to formulate plans for observing the 1969 moratoriums. Activities rising from these plans provided the means for Charles James and many others to wear a black armband.

The Religious Society of Friends, known also as Quakers, has concerned itself since its founding with the futility and immorality of war. At the time of the restoration of the English King Charles II in 1660, a "Declaration from the Harmless and Innocent People of God, called Quakers" reads:

> We utterly deny all outward wars and strife, and fightings with outward weapons, for any end, or under any pretence whatever; this is our testimony to the whole world. The spirit of Christ by which we are guided is not changeable, so as once to command us from a thing as evil and again to move unto it; and we certainly know and testify to the world, that the

> spirit of Christ, which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the kingdom of Christ nor for the kingdoms of this world.[1]

This conviction is based on our essential belief that there is that of God in every man, which has led us not only away from war but into a genuine feeling of equality and brotherhood with all men everywhere.

> Since the working of the Inward Light led men into Truth by unusual ways, it was recognised by the Quaker that toleration of opinions other than those generally held was necessary if the spirit was not to be hindered. To be free to speak and act in accordance with the law of God was an essential of Christian progress. No law of the church or state was considered greater than this law.
>
> Perhaps the greatest contribution the Quaker made was his unflinching constancy in resisting the incursions of the state into the realm of conscience. When disobedience to the law was inevitable he stood his ground without evasion, resisting never with physical violence but with the power of rightiousness and the full force of his religious conviction.
>
> . . . This Inward Light, this something of God in every man, was the center of Quakerism, the mainspring of action behind all the Testimonies, inspiring man's life and giving him faith and courage to withstand persecution.[2]

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[1] *The Quaker Story* by Sidney Lucas, Harper Bros., pg. 60.

[2] *Ibid.*, pgs. 62-63.

It still is today. A relevant quote from *Faith and Practice*, the Book of Discipline of the New York Yearly Meeting, adopted July 27, 1968, reads:

> No clear line can be drawn between "religious" and "secular" affairs. The service of God is found *in* the world. Accordingly, the Society of Friends has a deep concern for the welfare of the whole community and for every sector of it. Where there is tension, injustice, or conflict—between individuals, groups, or nations—Friends are called to carry on a ministry of reconciliation. This involves an intelligent caring for the dignity and welfare of all persons, and a love for the enemy and the unlovely, not merely for those who love us. This further involves a special caring for those whom the world neglects or exploits or condemns.[3]

It is from this religious context that Charles James drew his moral imperative to act as he did, in wearing a black armband—symbol of sympathy and mourning for the dead —on those days accepted nationally as the time to demonstrate for peace and for an end to the killing in Vietnam. His action was as one member of this meeting, along with other members who chose out of the same deep convictions, to wear a black armband all and every day of the moratoriums. Some of our members also joined in the Washington peace march or joined other members of the Elmira community in keeping a peace vigil in Wisner Park, or held our meeting house open for any one who wanted to come in and discuss the disturbing and divisive issues of the Vietnam War. The armband Charles James

[3] *Faith and Practice*, The Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends, 15 Rutherford Place, New York, N.Y., pg. 34.

wore was one of many made at our meeting house and worn by our members into every walk of life we represent.

Some schools took advantage of this history-in-the-making event by discussing with their students the issues involved and the dynamics of the democratic process taking place in this dissent and peaceable demonstration. That the Addison school missed this opportunity was cause for regret. But their subsequent firing of a teacher for exercising his right silently to stand for what he believes shocked us into the realization that our fundamental liberties, even though protected by the bill of rights, still need our vigilance to keep them alive.

We are proud of the courage and integrity shown by this gentle man among us, and of his wife and children who have suffered along with him. We stand with them all the way, even as another teacher in our midst sewed his armband to his sleeve and still wears it in protest against the persecution of his fellow teacher. But to our knowledge no other school or school board chose to suppress this expression of sympathy and mourning used by many teachers and others throughout the state and nation, most of whom were not Quakers but who believed in and acted on their right to stand, even in silence, and be counted.

We are deeply sorry that Charles James and his family have had to endure for all of us the deprivations, animosities, and suffering that should either have been none of ours or all of ours to share, since we acted similarly, based on the same religious convictions.

We present this Testimony of our full support of the actions of Charles James in wearing to school and in his classrooms a black armband; and we protest the intolerance which has been practiced against him in direct contradiction of his protections under the law of this good land.

Preliminary Injunction Granted by the District Court

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

Civil 1971-164

CHARLES JAMES,

Plaintiff,

—VS.—

THE BOARD OF EDUCATION OF CENTRAL DISTRICT No. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central District No. 1; CARL PILLARD, Principal, Addison High School; and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants.

APPEARANCES:

BURT NEUBORNE, Esq.
New York Civil Liberties Union
84 5th Avenue
New York, New York 10011
For the Plaintiff.

HARRY TREINEN, Esq.
11 East Market Street
Corning, New York 14830
For the Defendants.

Relying upon the mandate of the Court of Appeals in Docket No. 72-1109 (May 24, 1972), the plaintiff moves for an order directing the defendants to reinstate the plaintiff as a teacher at Addison High School for the 1972-1973 school year forthwith pending the final disposition of this matter.

This case was originally heard before Judge Harold P. Burke. The instant motion is brought before me because Judge Burke is away during the month of August and the plaintiff contends that, unless he is reinstated in time for the school year commencing in September, he will not be reinstated for yet another year. It should be noted that the plaintiff has been unable to find regular employment in the Elmira area as a teacher since the defendants terminated his employment on January 13, 1970.

The defendants oppose the motion and have filed affidavits supporting their opposition. They contend that, if the plaintiff is reinstated, another teacher will lose her job and that the educational process would be disrupted if the plaintiff is reinstated and then terminated upon the action being determined against him.

Although counsel for the defendants argues that issues of fact remain, he was unable to specify at oral argument what those issues are. None of the affidavits before Judge Burke reveals any disputed factual issues. Both sides moved for summary judgment before Judge Burke, who granted summary judgment in favor of the defendants. As stated by the Court of Appeals, "[t]he facts essential to a resolution of the conflicting interests are undisputed." Slip opinion at 3229. In addition, "the record is barren of a scintilla of evidence indicating that there were any incidents or threats to school discipline, that any students or teachers complained of or were offended by James's first

or second protest, or that the armband constituted more than a silent expression of James's own feeling." *Id.* at 3242.

The court considers the plaintiff's motion as an application for preliminary injunctive relief. Because the facts discussed above disclose "probable success on the merits and some irreparable injury," *Inmates of Attica Correctional Facility* v. *Rockefeller*, 453 F.2d 12, 20 (2d Cir. 1971), such relief is appropriate.

It is therefore hereby ordered that the defendants reinstate the plaintiff as a teacher of English at Addison High School for the 1972-1973 school year forthwith pending the final disposition of this action.

The court will not entertain an application for a stay of this order.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: August 11, 1972